

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place Room 503
Boston, MA 02108
(617) 727-2293

ALICE OFRIA,
Appellant

D1-17-089

v.

TOWN OF BILLERICA,
Respondent

Appearance for Appellant:

Gary G. Nolan, Esq.
Nolan Perroni, PC
73 Princeton Street, Suite 306
North Chelmsford, MA 01863

Appearance for Respondent:

Daniel C. Brown, Esq.
Feeley & Brown PC
1600 Boston-Providence Hwy
Walpole, MA 02081

Commissioners:

Christopher C. Bowman

ORDER OF DISMISSAL

The Appellant, Alice Ofria (Ms. Ofria), pursuant to G.L. c.31, § 43, filed an appeal with the Civil Service Commission (Commission) on May 10, 2017 claiming that the Town of Billerica (Town) did not have just cause to lay her off from her position as a Lab Technician / Assistant Chemist on May 1, 2017.

Based on my review of the “MuniClass Manual”, a list of state and municipal civil service titles, it appears that this position falls under the “official service” civil service titles. It is undisputed that Ms. Ofria did not take a civil service examination prior to being hired by the Town as a Lab Technician / Assistant Chemist in 2012, a position for which there has been no civil service examination in recent memory; and no

establishment of an eligible list from which a Certification of names can be generated.

Therefore, the only way in which Ms. Ofria could have been appointed is through the “provisional” appointment process, meaning that she was a provisional employee at the time she was laid off.

The third paragraph of G.L. c. 31, § 41 provides the following limited protections to provisional employees, such as Ms. Ofria, who have been employed for at least nine months in the provisional position and are discharged for reasons related to his personal character or performance:

“If a person employed under a provisional appointment for not less than nine months is discharged as a result of allegations relative to his personal character or work performance and if the reason for such discharge is to become part of his employment record, he shall be entitled, upon his request in writing, to an informal hearing before his appointing authority. If the appointing authority, after hearing, finds that the discharge was justified, the discharge shall be affirmed, and the appointing authority may direct that the reasons for such discharge become part of such person’s employment record. Otherwise, the appointing authority shall reverse such discharge, and the allegations against such person shall be stricken from such record. The decision of the appointing authority shall be final, and notification thereof shall be made in writing to such person and other parties concerned within ten days following such hearing.”

Furthermore, provisional employees do not enjoy the same protections that tenured civil service employees enjoy, including the right to appeal a termination decision to the Commission (see Rose v. Executive Officer of Health and Human Services, 21 MCSR 23 (2008) (provisional employee had no right to appeal her termination to the Commission even though she had been treated as a tenured civil service employee throughout her almost 30 year career); see also Hampton v. Boston, Case No. D-05-430 (2006) (provisional employee had no right to appeal his 3-month suspension to the Commission)).

The limited protections afforded to provisional employees under the civil service law have also been confirmed by numerous court decisions. see Dallas v. Commissioner of Public Health & others. 1 Mass. App. Ct. 768, 771 (1974), referring to Sullivan v. Commissioner of Commerce and Dev. 351 Mass. 462, 465 (1966) (in the case of provisional employees, there is “no tenure, no right of hearing, no restriction of the power to discharge”). See also Raffery v. Comm’r of Pub. Welfare, 20 Mass.App.Ct. 718, 482 (1985) (provisional employee has right to an informal hearing by the Appointing Authority, but no further right to appeal to the Civil Service Commission).

Based on a plain reading of the statute and the above-referenced Commission and court decisions, the Commission does not have jurisdiction to hear this appeal. For this reason, Ms. Ofria’s appeal under Docket No. D1-17-089 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on June 22, 2017.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:
Gary G. Nolan, Esq. (for Appellant)
Daniel C. Brown, Esq. (for Respondent)